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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,621	04/03/2004	Larry V. Weathers	1130	2485
23545	7590	05/03/2006		
KATHLEEN M HARLESTON THE HARLESTON LAW FIRM 909 TALL PINE ROAD MT PLEASANT, SC 29464			EXAMINER OKEZIE, ESTHER O	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/817,621	Applicant(s) WEATHERS ET AL.	
	Examiner Esther O. Okezie	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 7-24 is/are pending in the application.
- 4a) Of the above claim(s) 4, 7-12 and 20-22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-18, 23 and 24 is/are allowed.
- 6) ☒ Claim(s) 13-15 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/23/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed on 2/02/2006 and the remarks presented therewith have carefully considered. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 13-15, and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward in view of Roi.
2. Re claim 13, Hayward discloses a vegetable masher capable pushing or packing leaves or other debris into a trash container, comprising: (a) substantially planar head portion (1); and (b) a brace (4) connected on one side to a substantially planar underside of the head portion; and (c) a mount portion (2) permanently connected to an opposite side of the brace, the mount portion being generally cylindrical in shape and comprising an end for receiving an end of a handle (B).

Hayward does not disclose the mount portion comprising an open end, the end of the mount is closed by the shank portion of the handle. Roi discloses a vegetable

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masher including an open-ended mount portion for receiving handle (M). It would have been obvious to one of ordinary skill at the time of the invention to modify the mount of Hayward to include an open end for removing or replacing the handle during cleaning or storage of the device.

3. Re claim 14, Hayward discloses four triangular-shaped brace arms (4) each extending out from a central longitudinal axis of the brace (see fig 3).

4. Re claim 15, Hayward discloses a brace portion (4) attached to the head portion (1) wherein the longitudinal axis of the brace is aligned with the longitudinal axis of the mount portion (2). Hayward does not disclose the brace is conical in shape and includes a frustum attached to the first open-ended mount portion. Roi discloses a conically shaped vegetable masher with frustum shaped base (G). It would have been obvious to one of ordinary skill at the time of the invention to as a matter of design choice.

Applicant has not disclosed that adding a frustum shaped brace provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore would have expected Applicant's invention to perform equally well with triangular shaped braces disclosed by Hayward.

5. Re claim 19, Hayward discloses a vegetable masher capable pushing or packing leaves or other debris into a trash container, comprising: (a) substantially planar head portion (1); and (b) a brace (4) connected on one side to a substantially planar underside of the head portion; and (c) a mount portion (2) connected to an opposite side of the brace, the mount portion being generally cylindrical in shape and comprising an end for receiving an end of a handle (C); wherein the head is formed as a grate (fig 1).

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Hayward does not disclose the mount portion comprising an open end, the end of the mount is closed by the shank portion of the handle. Roi discloses a vegetable masher including an open-ended mount portion for receiving handle (M). It would have been obvious to one of ordinary skill at the time of the invention to modify the mount of Hayward to include an open end for removing or replacing the handle during cleaning or storage of the device.

Allowable Subject Matter

Claims 16-18, 23, and 24 are allowed.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

This application contains claims 4,7-12, and 20-22 drawn to an invention nonelected with traverse in the reply filed on 8/04/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 4/16/06


DEAN J. KRAMER
PRIMARY EXAMINER